

**INVESTIGATIVE REPORT OF**  
**ALLEGATIONS MADE AGAINST MASON CLASSICAL ACADEMY**

**Submitted to: Mason Classical Academy**

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## **Introduction**

Mason Classical Academy (hereinafter “MCA”) is a charter school operating in Collier County, Florida since August 2014. Originally, the school focused on Kindergarten through Sixth grade; then, for the 2016-2017 school year, MCA began offering high school grades.

As will be demonstrated by the events and issues described and investigated herein, there have been a number of complaints lodged against MCA over the years, and MCA has faced a significant amount of criticism. None of these complaints or criticism amounted to a sufficient level to cause any adverse action against the school. Then, on June 7, 2018 an individual named Joseph Baird authored a Complaint and sent his complaint to Office of the Inspector General with the Florida Department of Education concerning a number of alleged episodes of wrongdoing on the part of MCA. On June 8, 2018 he supplemented his Complaint and provided additional information to the Florida Department of Education (hereinafter, collectively the “Complaint”). Mr. Baird was as a parent of a number of children attending MCA. In August 2016, Mr. Baird became a member of the MCA Board and was appointed Treasurer until his resignation from the MCA Board in October, 2016.

The Florida Department of Education responded to Mr. Baird on June 13, 2018 and advised Mr. Baird that the issues in his Complaint did not fall within the Department’s “jurisdictional purview.” By way of the same letter, Mr. Edward G. Rawls, Jr., forwarded the Complaint to the Collier County School District (hereinafter the “District”) as the more appropriate entity to whom the Complaint should be directed.

After receipt of the June 13, 2018 letter from Mr. Rawls, the District, by and through its general counsel, Jon Fishbane, began its own investigation into Mr. Baird’s Complaint and added to the subject matter of the investigation many of the “parental calls, complaints, and student departures from MCA, that had come into the District over several years, which were not being addressed by MCA.”<sup>1</sup> Mr. Fishbane then conducted an investigation, apparently on behalf of the District, (despite the fact that there is no record of the CCPS Board instructing him to conduct an investigation) culminating with his publishing of the Investigative Report on June 3, 2019 (hereinafter the “Fishbane Report”).

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<sup>1</sup> Quote taken from page 3 of the Investigative Report of Jon Fishbane dated June 3, 2019.

The mere fact that Mr. Fishbane conducted this investigation is troubling for a number of reasons. First, consider the relationship between these two entities; MCA and the District are parties to a contract, which is the Charter School Contract (“Charter Contract”). The Charter Contract sets forth a detailed procedure for how the parties are to resolve any disputes that may arise. Despite the express language in the Charter Contract, Mr. Fishbane conducted a yearlong investigation of MCA. The District did not inform MCA that it had tasked Mr. Fishbane to conduct this investigation, rather MCA found out about the investigation from a story in the Naples Daily News. Only after MCA discovered the existence of the investigation and requested to be permitted to provide input did the District allow MCA the opportunity to provide information as part of the investigation. This opportunity to provide consisted of Mr. Fishbane conducting an interview of David Hull (then the principal of MCA) and two others for 3 hours. Mr. Fishbane’s report gave little attention or merit to the information provided by MCA. After investigating for over a year, the District disclosed the report and began considering a termination of the Charter Contract within a matter of days. Conducting this investigation in this manner, followed by the resulting actions of the District after release of the investigation cause serious reflection on the intentions of the District all along with MCA, a contractual partner.

After the release of the Fishbane Report, MCA hired this law firm (hereinafter the “Firm”) in part to conduct a separate investigation into the issues addressed by both the Baird Complaint and the additional issues raised by the District in the Fishbane Report. On August 1, 2019, MCA and the District participated in a mediation session, which resulted in a Mediated Settlement Agreement which created a course of action that the parties agreed for MCA to implement to address the issues raised in the Fishbane Report. Notably, MCA agreed to many terms in the Agreement, that are not required of them by law, but which they found agreeable under the guise of the District attacking their Charter status. This Firm’s investigation is concluded by the publishing of this Report.

### **Our Methodology**

This Firm’s investigation is in response to the District’s investigation, and as such the bulk of the information considered came from the District. The District’s investigation began initially as a result of the Complaint by Mr. Baird. A review of the Complaint is made difficult as it is 9 plus pages, single spaced with very little cohesion and structure. Mr. Baird himself identified 4 separate “Complaints” as follows:

1. The leaders of MCA have created an environment where financial fraud can occur without detection. This complaint is primarily due to actions which Mr.

- Baird perceived to be attempts to block the formation of the Financial Oversight Committee.
2. The leaders of MCA blocked Mr. Baird, in his role as Treasurer, from access and information necessary for him to perform his duties as Treasurer.
  3. A specific complaint against Board Chair Kelly Lichter, that she knowingly aided Mr. Hull in blocking Mr. Baird's attempts to perform his duties as Treasurer and alleging Mrs. Lichter's complacency and purported backing of Mr. Hull's actions.
  4. Sunshine Law violations by the MCA Board Members.

On November 8, 2018, subsequent to the initiation of the District's investigation, Mr. Baird issued a second document, titled "What's Wrong with MCA?" Mr. Baird provided this document to the District. In the Overview of this document Mr. Baird identified a list of eleven new allegations of misconduct which he titled a "list of shady and /or dubious practices I have uncovered since then." These additional issues are too numerous and insignificant to list herein. A number of them, but not all, were addressed in the Fishbane Report.

In addition to Mr. Baird as a source of issues, the Fishbane Report also addressed other issues which the District had received over the years. The investigation by this Firm has focused on the issues raised and discussed in the Fishbane Report. To the extent that the Fishbane Report ignores issues raised by Mr. Baird in his Complaints, this investigation similarly ignored such issues unless they deal directly with a primary issue.

To conduct this investigation, the Firm began with a thorough review of the Baird Complaint as well as the Fishbane Report. A public record request was made to obtain all of the documents and items which Mr. Fishbane reviewed in his investigation; and those items were reviewed. The Firm did not find it necessary to interview Mr. Baird due to the plethora of email correspondence we reviewed between him and Mr. Fishbane, as well as his comments and allegations in his various complaints.

In addition, MCA provided additional documentary records pertaining to some of the accusations. This also included a corrective memorandum created by MCA in response to the Fishbane Report, which included the responses of MCA as drafted by its attorney Shawn Arnold, Esq., and where necessary, the corrective measures that MCA felt it could implement in response to the conclusions in the Fishbane Report.

The Firm interviewed a number of the key players. Notably, interviews were conducted of various MCA employees and Board Members who had direct and first-

hand knowledge of the subjects of the investigation. Out of respect for the privacy of outside individuals, the Firm did not interview anyone who is unaffiliated with MCA.

As part of the legal analysis, the Firm reviewed the relevant Florida Statutes and case law, along with other relevant legal items as identified in the Firm's own legal research and as provided by MCA's outside counsel Shawn Arnold, Esq.

Whenever possible, the Firm sought to obtain direct comment or communication from the relevant person whose conduct is being discussed subject to the limitations set forth above. The Firm feels that it is vital for correct interpretations to come from the speaker as opposed to the Firm. Credibility is weighed, when necessary, but the Firm has chosen not to guess at credibility or a person's intentions unless absolutely necessary.

### **Concerns About Mr. Fishbane's Methodology**

The Fishbane Report was stridently one-sided regarding the persons interviewed and documents collected. Mr. Fishbane noted that during the course of his investigation he interviewed approximately thirty people, reviewed extensive documents, including email communications, policy manuals and Board Minutes. He stated, "most importantly, in reviewing the extensive email communications, Board Meeting Minutes, Policies, and so on, the central priority analytically was to let the documents speak for themselves." Mr. Fishbane failed to interview many key people, yet chose to make interpretations of their written statements in a manner that was prejudicial to the speaker. The Firm perceives this as a fundamental error in his methodology. If a written communication requires interpretation or can be interpreted in multiple manners, then it is prudent to speak to the author of the communication to assist in gleaning intent.

On June 13, 2018, the District received a copy of the Complaint filed by Mr. Baird. At that time, Mr. Fishbane began an investigation into the Complaint, but it remains unclear whether the decision for Mr. Fishbane to investigate was his decision, or if he did so at the direction of the School Board or another superior. On or about August 9, 2018, Dr. Sheryl Rodgers, Administrative Director for Charter Schools for the District, created a document, titled "Mason Classical Academy Concerns and Status" which includes many of the issues raised in Mr. Baird's Complaint. On December 10, 2018, Judith Delgado, Dr. Rodgers' replacement with the District, sent the document to Mr. Fishbane. The District failed to share this document or the concerns therein with MCA. The MCA Board was made vaguely aware that the District was looking into Mr. Baird's Complaint through a Naples Daily News Article published in October 2018. After repeated requests by Mrs. Lichter and Shawn Arnold, in a letter dated April 23, 2019 from Jon Fishbane to

Shawn Arnold, counsel for MCA, Mr. Fishbane, for the first time, laid out the central areas of the investigation. This correspondence was sent six days prior to the one and only interview with Principal Hull and ten months after the original Complaint was received. At no time prior to April 23, 2019, did the District or Mr. Fishbane inform MCA and its Board of Directors that the District was pursuing an official investigation or provide the scope of the investigation to the MCA Board.

Even though MCA did not receive a formal notification from the District that Mr. Fishbane was conducting a formal investigation prior to April 2019, it took steps to provide information to the District in order to defend against Mr. Baird's Complaint. It sent correspondence, copies of emails, and other records, including an audit performed by McCrady and Associates to Mr. Fishbane (sent on April 5, 2019 and requested to be included in the Report by Arnold). Some of the important documents supplied by MCA appear to have been ignored by Mr. Fishbane.

MCA was treated uniquely by the District regarding how they could submit information to Mr. Fishbane. In November 2018, Mr. Fishbane demanded that MCA cease sending him documentation directly and that any information that the school wished to provide should go through MCA's counsel's office. It is not clear why the District made such a request to MCA. Yet, the District's response to a records request shows an extensive amount of emails and documents provided by multiple individuals throughout the investigation and no such requests were made to those persons to provide information through counsel. For example, Mr. Baird sent at least 112 separate emails to Mr. Fishbane and the District after the start of the investigation. Further impeding MCA's ability to defend itself, Mr. Fishbane later told Shawn Arnold in April 2019 that the School Board would not be accepting any additional information from the school.<sup>2</sup>

Mr. Fishbane's methodology was flawed as he failed to interview any board members, current staff members or any parent of MCA students who had positive experiences with the school. The only individual from the school that Mr. Fishbane interviewed was Principal Hull. Susan Turner, MCA's Business Manager, and Chuck Marshall, MCA Compliance Officer, were present during the interview but little to no information was requested of them. That meeting took place on April 29, 2019 and lasted approximately three hours. Mr. Fishbane did not interview any current or past MCA Board members. He made a number of allegations against both Kelly Lichter and Laura Miller, but failed to interview either of them or allow them to defend the allegations made against them. Further, he did not interview the current staff mentioned in the report,

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<sup>2</sup> Mr. Baird was given no such restraints. He sent approximately 29 emails to CCPS after April 2019.

including Joe Whitehead or Gena Smith. Lastly, and most importantly, his Report and records show no evidence of any interviews with parents of children at MCA who had positive feedback of the school and positive experiences with Mr. Hull and staff. Despite not hearing the perspective of the employees and Board Members accused of wrongdoing, Mr. Fishbane felt confident reaching conclusions of their intentions and the meaning of their actions.

While the conduct and events that transpired after the release of the Fishbane Report are not part of the scope of this investigation, it is important to consider such events in order to give context to the concerns about Mr. Fishbane's methodology. The Fishbane Report was dated June 3, 2019. On Sunday, July 7, 2019, a little over one month after the publication of Fishbane's Report, and one week after MCA sent a response to Fishbane's Report District titled, "Alleged Defaults and Cures" the District posted on its website an agenda item to discuss termination of MCA's contract at its July 11, 2019 Board Meeting. The District did not provide notice to MCA of its intent to terminate the Charter. Instead, MCA was made aware of the agenda item by a member of the MCA community. The entire yearlong investigation, its findings, and the District's move to discuss termination, was conducted in opposition to Florida Statute, Section 1002.33, the "Charter Statute," and MCA's own charter contract. There, one will find a detailed outline of a clear dispute resolution process. Those steps are as follows:

Step 1: The district is required to provide a written communication identifying any problems and proposing a solution.

Step 2: The School is required to have 15 days to respond and accept the proposed action or offer an alternative action.

Step 3: If efforts at agreement fail, the parties may mediate the dispute with FDOE.

These are pivotal due process steps in the process that MCA should have been afforded, but was not. In this case, the District ignored the required steps and moved straight to a discussion of termination of the top elementary, middle and high school in Collier County

Florida law prescribes a high standard for termination of a charter contract. Under subsection (8) of the Charter Statute, a school board may only terminate a charter contract if there is clear and convincing evidence of a material violation of the law or of the charter contract. Further, the Charter Statute specifically states the following: "The sponsor shall make student academic achievement for all students **the most important factor** when determining whether to renew or terminate the charter." (Emphasis added). It is



undisputed that MCA is academically, one of the most successful schools in Collier County and in the State of Florida. The District did not follow the MCA Charter contract or the Charter Statute during its yearlong investigation into MCA or when it posted the agenda item to discuss MCA's termination.

As acknowledged by the Fishbane Report, MCA has a very successful history of academic achievement of their students. Termination of this charter seems a very harsh reactive step for the District to take, given the impact such a decision could have on the MCA students. This Firm has found no evidence that there should have ever been a discussion of termination of MCA's charter.

## **I. Financial Oversight and Audit Committee**

In his Complaint, Mr. Baird alleges that the Mason Classical Academy Board of Directors, in collusion with Principal Hull, acted to 1) prevent the formation of the Financial Oversight Committee and 2) limit Mr. Baird's ability to properly undertake his role as Board Treasurer and receive financial and accounting information. The Fishbane Report found the following: "given the dissolution of the original Finance Committee, and the fact that the new Financial Oversight and Audit Committees were shell committees that never met or oversaw anything, the Board breached the terms of its own Application and thus has been in continual breach of the Charter Contract since the dissolution of the Finance Committee in July 2016. In sum, the Board has breached its financial and auditing oversight obligations under the Contract." There is no evidence to support such a conclusion. The MCA Board chose to serve as the Financial Oversight Committee and successfully provided the necessary financial and auditing oversight functions. While the financial and audit oversight may not have been done exactly as provided in the Charter Application, the necessary functions were performed. In fact, Mr. Fishbane acknowledged in his Report that there were no problems with MCA's unaudited financials or the McCrady & Associates independent auditor's financial statements.

### **A. Allegations from Complaint and History Between Baird and Hull Families**

Mr. Baird made note in his Complaint that even though he had been aware of the,

Potential for mismanagement of government money since 2016, I did not speak up about this for two reasons. While I did see suspicious behavior from Mr. Hull and Mr. Marshall, I have no evidence of actual fraud being committed and because the school was providing a good education to several hundred students, I saw no reason to cause problems for the school.

*I was also afraid my children who were enrolled at MCA would be punished by Mr. Hull in a spirit of revenge.*

(Emphasis added). He further stated in his Complaint, that he had witnessed,

Mr. Hull being deceptive, manipulative, and mean spirited in multiple occasions. Because Mr. Hull is in charge of managing a several million-dollar budget of government money without any oversight and is not held accountable to anyone, I have become concerned about the potential for fraud or at the very least misuse of government money and feel I can no longer remain silent about the events that I have witnessed over the past few years.

Mr. Baird further explained that he had removed his children from school, so he was now able to speak freely without fear of retaliation from Mr. Hull. However, the communications between the Baird and the Hull family offer an entirely different motive for the timing of Mr. Baird's Complaint, which will be explained in detail below.

It is important to note the friendship and history between the Hull and Baird families. The families became friends through their children attending MCA together well before Mr. Baird became a member of the Board of Directors. Mr. Hull admits that he was instrumental in getting Mr. Baird elected to the Board as he believed Mr. Baird would be an asset to the Board as Mr. Baird represented to have a classical education which fit with the MCA vision. Mr. Hull denies that he wanted Mr. Baird on the Board in order to stack the Board in his favor.<sup>3</sup> Their families often participated in events together and socialized outside of school, including attending parties together and Christmas caroling together in December 2017.

The picture that Mr. Baird paints in the Complaint of Mr. Hull and the concerns for his children being mistreated by Mr. Hull are in stark contrast to the communications sent between the Baird family and Mr. Hull in the months leading up to the Baird children being removed from school and Mr. Baird filing the Complaint. The email correspondence shows that the Baird family was very happy with Mr. Hull's leadership at MCA and reiterated time and again that they trusted Mr. Hull with the care of their children. In an email from Mr. Baird to Mrs. Lichter dated October 6, 2016, the day that Mr. Baird resigned from the Board of Directors, he wrote about Mr. Hull, "I am still a firm supporter of David Hull as principal. I think my children are getting a fantastic education at MCA, and this is a direct result of David's efforts as principal. I will continue to keep my children enrolled at MCA because I see the value in what is happening there. I have

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<sup>3</sup> Mr. Baird's feeling that this was Mr. Hull's intention is not actual evidence of any such intent by Mr. Hull.

nothing but praise to offer David when it comes to the education and discipline that MCA offers. I am one of David's biggest supporters even though he may not realize it. I will continue to support him and the school in any way that I can in the future, and I would be happy to enroll my children in any school run by David." The Bairds' compliments about Mr. Hull continue throughout the tenure of the Bairds' children's attendance at MCA.

In an email from Mrs. Baird to Mr. Hull dated November 3, 2017, she thanked Mr. Hull for the "GREAT transcript and information sheet about MCA" that her child was able to use to apply to and get into three colleges and she thanked him for "the excellent education that MCA provides." In an email from Mr. Baird to Mr. Hull dated February 1, 2018, she stated, "I am very grateful for you and for all you have done for the school and our family... the only reason we are comfortable enrolling our children in MCA is because you were there to guide it, and that is still the case. There are very few people we would entrust our children to, and you have always been one of them. MCA is the success that is because of you." In emails between Mr. Baird and Mr. Hull dated February 16, 2018, two years after Mr. Baird's time on the Board, Mr. Baird reiterated his wife's statements and stated that Mr. Hull is, "one of the few people that we are willing to entrust our children's formation to. That is the highest compliment I can pay anyone." Further, in that same email, Mr. Baird apologized about his own behavior to Mr. Hull and stated, "I have a terrible tendency to become combative when faced with differing views and opinions." This statement is very telling as to the events that unfolded after the Baird children were removed from school. The goodwill is further evidenced by an email Mr. Hull sent to the Bairds on April 28, 2018 congratulating one of the Baird children's accomplishments and his continual offering of support from the school.

Just a few days later, in an email dated April 30, 2018 from Mrs. Baird to the school, Mrs. Baird stated that they had decided to remove all of their children from MCA and homeschool them the following year. She further asked that her children be allowed to continue to participate in the sports and extracurricular activities offered by MCA. The evidence shows that this series of events appears to be the catalyst for the change in the relationship between the Bairds and Mr. Hull.

In a series of emails between the Bairds and the school between April 30, 2018 and May 24, 2018, the Bairds insisted that their children should be allowed to participate in sports at MCA even though they were no longer enrolled in the school. Both Chuck Marshall, the schools Compliance Officer, and Mr. Hull explained to Mrs. Baird that homeschool children could participate in sports at their zoned schools but there was no provision that allowed the children to continue with sports at their previous charter

school. Further, through advice of counsel, MCA had determined that no homeschool children were eligible to participate in MCA sports unless there was an open seat at the school. At the time that the Bairds requested their children be allowed to participate in the school sports, MCA was at capacity and it would have been illegal for the school to allow an ineligible player to compete on any sport team. The requisite law is found in Section 1006.15(3)(c), Florida Statutes, which states in part, home education students must be registered with the Home Education Office of the school district in which they reside and those students are eligible to participate at the public school the student would be assigned according to school board attendance or a public school operated by the school district, the student could chose to attend and *provided a seat is available*.

Mr. Baird filed the Complaint with the Department of Education just two weeks after the Bairds received the final decision that their children would not be eligible to participate in school sports at MCA. In Mr. Baird's own words, "I have a terrible tendency to become combative when faced with differing views and opinions." This is evidenced by his ongoing criticism on MCA, which has continued long after he authored the Complaint. Even after the Baird family has left the area and moved to another state, Mr. Baird continues to send correspondence to the District alleging violations by the MCA Board. Mr. Baird's communications have continued even past the finalization of the Fishbane Report. A recent records request shows at least 17 emails from Mr. Baird to Mr. Fishbane between June 3, 2019 and August 8, 2019.

#### **B. Financial Oversight and Audit Committees**

The Fishbane Report alleges the following: "given the dissolution of the original Finance Committee, and the fact that the Financial Oversight and Audit Committees were shell committees that never met or oversaw anything, the Board breached the terms of its own Application and thus has been in continual breach of the Charter Contract since the dissolution of the Finance Committee in July 2016. In sum, the Board has breached its financial and auditing oversight obligations under the contract." (Fishbane 17). As previously discussed, the functions were successfully performed by the MCA Board.

Pursuant to MCA's Charter Application, the Organizational Plan states that a Finance Committee and an Audit Committee will be constituted under the authority of the Board. The duties of the Finance Committee include the following:

The Finance Committee shall assist the Governing Board in carrying out its budget and finance duties. At least one member of the Governing Board shall serve on the Finance Committee. The Business Manager shall be

required to attend all Finance Committee meetings. Specifically, the Finance Committee shall:

- (1) Make recommendations to the Governing Board in the following areas:
  - (a) Financial planning, including reviews of the charter's school's revenue and expenditure Projections.
  - (b) Review of financial statements and periodic monitoring of revenues and expenses
  - (c) Annual budget preparation and oversight
  - (d) Procurement
- (2) Serve as external monitoring committee on budget and other financial matters.

The Audit Committee is described as follows:

The Audit Committee shall consist of two Governing Board members, one volunteer member who is a parent of a student attending the charter school, and one volunteer member who has experience in accounting or financial matters. The Principal and Business Manager shall serve as ex-officio, non-voting members of the committee. The Audit Committee shall:

- (1) Evaluate the request for proposal for annual financial audit services
- (2) Recommend the selection of the financial auditor
- (3) Attend the entrance and exit conference for annual and special audits
- (4) Meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit
- (5) Be accessible to the external financial auditors as requested to facilitate communication with the Governing Board and Principal
- (6) Track and report progress of the status of the most recent audit findings and advise the governing on policy changes needed to address audit findings
- (7) Provide other advice and assistance as requested by the Governing Board; and

(8) Be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit act and rules of state auditor.

### **C. Findings**

While MCA did not operate the Financial Oversight and Audit Committees exactly as provided in the Charter Application, the functions were successfully provided by the Board. Prior to June 2016, MCA had a functioning and separate Finance Committee. In the early years of the school's formation, the Finance Committee was very active and was involved in the day to day business operations of construction and budgeting. Once the school was established, the Finance Committee was not as necessary to the daily operations of the school. In the summer of 2016, the Board Members attended a training session with Dr. Carpenter, an affiliate with Hillsdale College, where the role of a Finance Committee versus a Financial Oversight Committee was extensively discussed. Dr. Carpenter explained that a Finance Committee handled more of the day to day operations of the school and that a Financial Oversight Committee's role was to oversee financial operations, which was more in line with what charter school boards should have. A decision was made at that time that the Finance Committee would be dissolved, and a new Financial Oversight Committee would be formed. Following through with this decision, the Board approved the dissolution of the Finance Committee on July 11, 2016.

Upon his appointment to the Board in August 2016, Mr. Baird was tasked with formation of the Financial Oversight Committee. On September 20, 2016, Mr. Baird sent an email to the MCA community seeking volunteers to serve on the Financial Oversight Committee. Mr. Baird received eight applications in response to his request. All of the responses were from parents of children enrolled at MCA and two applicants were board member's spouses. Mrs. Lichter and Ms. Miller expressed concern that the applicants were all parents or spouses of Board members and felt that more outreach to the community was needed in order to have committee members with financial experience on the committee. At a Board Meeting on October 4, 2016, the Board voted on and approved the formation of the Financial Oversight Committee. The Board did not approve or appoint any committee members to the Financial Oversight Committee.

Mrs. Lichter admits that the formation of the Financial Oversight Committee stalled upon Mr. Baird's resignation from the Board (to be discussed in more detail below). Mrs. Lichter believed that the school's finances were strong, and the Board relied on the annual third-party auditors reports as well as the Treasurer's reports to review

MCA's finances. The annual audits were sent yearly to the District and the District has never questioned the auditor's findings. David Bolduc, current Board Member and Treasurer, was also interviewed. He stated he has made verbal Treasurer's Reports at several Board meetings he has attended. As part of his duties as Treasurer, he has unfettered access to all of MCA's financials, located on the MCA Google Drive, just as Mr. Baird did. He has not found any irregularities on his time on the Board.

After Mr. Baird resigned, the Board was focused on other issues and the Financial Oversight Committee was not filled. However, the Board, in whole, continued to function as a de facto "Financial Oversight Committee." The Board continued to oversee the annual budget preparation, participated in financial planning, and the new Treasurer, David Bolduc, reviewed financial statements and monitored revenues and expenses. The lack of a Financial Oversight Committee appears to be technical in nature, due to the Board performing the necessary functions of the Financial Oversight Committee.

Similarly, under the Charter Application an Audit Committee was to be formed. While the Board did not have a separately titled Audit Committee, as with the Financial Oversight Committee, the Board performed all of the functions of the Audit Committee as referenced in the Charter Application. In light of the fact that the Board was performing the functions of the Audit Committee, a separate committee was not needed. The Board retained McCrady and Associates to perform an annual audit and each year the independent audit found no financial mismanagement issues and each year the Audit was provided to the District. As with the Finance Committee, the lack of a separate Audit Committee appears to be a technical violation of the Charter Application, but one that did not cause any harm to the school as the necessary duties continued to be performed by the Board.

The Fishbane Report did not reveal any proof or bona fide allegations of any financial mismanagement. The Report stated that Mr. Fishbane discussed MCA's unaudited financials with District Staff in the Finance Department. "They advised that they did not have a problem with them nor McCreedy & Associates financial statements provided by MCA through Ms. Turner. Given staff observations, the undersigned will not question the acceptability of the submitted financials."

Pursuant to the Mediation Settlement Agreement entered on August 1, 2019 between District and MCA, MCA agreed to reinstate the Finance Committee and Audit Committee by October 15, 2019. Based on the agreement to reinstate the committees and the finding that the Board carried out the functions of the Finance and Audit Committee, this issue has been resolved.

#### **D. Allegations That Baird Was Prevented from Performing Duties**

This Firm has not found any evidence that Mr. Baird was prevented from performing his duties. Mr. Baird alleged that Board Members Mrs. Lichter and Ms. Miller, along with Mr. Hull and Mr. Marshall, worked to prevent him from carrying out his duties and responsibilities as Board Treasurer. He stated, “that he was essentially told by Mrs. Lichter and Ms. Miller that he should back off and not scrutinize or manage Mr. Hull and Mrs. Turner’s work. “

We have found no evidence that Mr. Baird was unable to perform his duties as Treasurer, instead it appears that Mr. Baird was confused about his role and the duties he was required to perform. Furthermore, Mr. Baird eventually received all of the very detailed information he requested and neglected to amend his Treasurer’s Report prior to his resignation. Mrs. Lichter, Ms. Miller and Mr. Hull have all denied that Mr. Baird was blocked in his ability to carry out his role as Board Treasurer. It is important to note, even though The Fishbane Report did not, that Mr. Baird had complete, unfettered access to all MCA financial accounts, statements, Amazon Prime purchase card documentation, and other financial related documents. Mr. Baird was provided access to the Google Drive account where all pertinent information regarding the school’s finances were kept. At the onset of his tenure as Treasurer, he had at least one meeting with Mrs. Turner that lasted approximately three hours. In an email from Mrs. Turner to Mr. Hull on October 5, 2016, Mrs. Turner confirmed the access that Mr. Baird had to MCA’s financials as follows:

Mr. Baird has been provided with access to MCA’s google drive since the beginning of his term as Treasurer. I have personally walked him through the folders on the drive that contain financial statements, bank statements, and reconciliations. I have created additional folders within the drive for him in order to simplify his work. He has access to the audit folders, which contain financial documents, including the general ledger and revenue details, that span twelve months of activity. He also has access to the workers compensation audits that I complete with an outside auditor – separate from the school’s annual audit- which detail employee wages, tax payments, and loan interest payments.

Even with access to this volume of information, Mr. Baird has questioned numerous expenses, names, vendors, and deposits.

In addition to the above, Mr. Baird also had access to Mr. Carpenter’s training materials and had a number of conversations with Mr. Carpenter regarding his duties.



Mr. Baird was not stopped by Mr. Hull from receiving additional training from Dr. Carpenter. Instead, Mr. Carpenter informed Mrs. Lichter that in order to continue to provide individualized assistance to Mr. Baird, the Board would need to pay Dr. Carpenter \$10,000 as a consultation fee. It was decided that the Board should not incur that expense as Mr. Baird would be able to attend Dr. Carpenter's annual governance training the following summer.

Mrs. Turner declined to be interviewed by the Firm in this investigation. We did review the correspondence between Mrs. Turner, Mr. Hull and Mr. Baird from the relevant time period. In addition, Mr. Hull, Mrs. Lichter, and Ms. Miller were interviewed regarding Mr. Baird's allegations.

Even though he was not a Board Member at the time Mr. Baird served on the Board, we believe it is important to note Mr. Bolduc's experience on the Board in the same role as Mr. Baird served. Mr. Bolduc stated that he has never been blocked by anyone at MCA from getting any information he has requested. He has unfettered access to all of MCA financials via the school's Google Drive. There, he can locate the following documents: every bank statement going back to the foundation of the school, financial audits, amazon purchases, and financial reports prepared by staff. He is able to timely complete his reports with all of the information located on the Google Drive and does not believe any other documentation is needed in order to fulfill his duties as Treasurer.

Mr. Hull was interviewed regarding Mr. Baird's allegations that Mr. Hull blocked him from carrying out his duties. Mr. Hull stated that he felt that Mr. Baird was taking too much time away from Mrs. Turner's daily workload. During the time that Mr. Baird requested information from Mrs. Turner, she was busy preparing payroll for the school. Mr. Hull felt that Mr. Baird had the same access to the records as Mrs. Turner did and should be able to locate the information he needed on his own, or with little direction from Mrs. Turner.

The email correspondence between Mr. Baird, Mr. Hull and Mrs. Turner do not show evidence of Mr. Baird being prevented from preparing his treasurer report. Instead, it shows staff attempting to respond to his inquiries. For example, in an email dated September 29, 2019, Mrs. Turner asked Mr. Hull if she could provide Mr. Baird the "supporting documentation for the amazon gift card so he knows that we are tracking it and not open to theft." Mr. Hull responded one minute later, "Of course." Mrs. Turner then provided the information to Mr. Baird and provided a detailed description of the procedure.

On September 29, 2016, Mr. Baird sent a list of 26 questions to Mrs. Turner in preparation for his Treasurer's Report for the October 4, 2016 Board. Mr. Hull believed that Mr. Baird could have located the answers for himself instead of taking up valuable staff time in engaging Mrs. Turner. Nonetheless, on October 5, 2016, Mrs. Turner provided a detailed response to Mr. Baird's inquiry.

According to an email from Mr. Hull to Mr. Baird dated October 5, 2016, at 7:07 a.m., he apologized that Mrs. Turner's work was not previously provided and admits that "it was a total communication failure on my part." The Board meeting occurred on October 4, 2016, the information from Mrs. Turner, if completed before the Board meeting, should have been provided to Mr. Baird prior to the Board meeting.

After Mr. Baird received the information, Mr. Baird did not contact either Mrs. Turner or Mr. Hull with additional questions or concerns regarding the responses. Instead, in an email to Kelly and Nick Lichter (to their private email addresses) on October 7, 2016, the day after he resigned, he complained to them about the way in which he received the documents. Mrs. Lichter responded, "I plan to meet with David and Susan to discuss since it looks like I will take over these responsibilities until we find someone." In Mr. Baird's Treasurer Report he stated that he would "complete my investigation upon receipt of this information." Mr. Baird failed to amend his Treasurer's Report after he received the information from Mrs. Turner. Mr. Baird, upon receiving the information on October 5, 2019, should have amended his Treasurer's Report, which did not occur prior to his resignation.

On October 5, 2016, Mr. Baird sent an email to Mr. Hull requesting a meeting to "talk things over." Mr. Hull responded that he would need some time and he had hoped that Mr. Baird's concerns had been resolved. Mr. Hull's communication was cordial, and he asked that Mr. Baird let him know if there was anything further that he could help him with. The meeting between Mr. Hull and Mr. Baird did not occur as Mr. Baird resigned from the Board one day later, on October 6, 2016.

Mrs. Lichter believes that Mr. Baird did not understand his role as Treasurer. In her opinion, based on her prior governance training, a Treasurer's main role is oversight, not day-to-day minutia of the school finances. She stated that when a new board member is elected, there is always a learning curve and she has always assisted the new member in becoming acclimated to the Board and their responsibilities, which is what she was attempting to do in assisting Mr. Baird. She was concerned about the amount of time that Mr. Baird's inquiries were taking from the school staff. Mr. Hull informed her that Mr. Baird was affecting Mrs. Turner's daily work and he was interfering with Mrs. Turner's ability to perform her duties. When Mrs. Lichter was contacted by Mr. Hull with his

concerns, she believed that Mr. Baird's inquiries needed to be addressed. She did not want to embarrass Mr. Baird by addressing the issues at a Board Meeting and thought it would be better to address through an email to him. Mrs. Lichter's email to Mr. Baird dated September 29, 2016, should be read in the entirety and not piecemeal. Her comments are as follows:

Good morning Joe! I spoke with Mr. Hull this morning about some questions you had for Mrs. Turner. I understand that you are still in the on-boarding process and learning, but I think those questions should be asked during an oversight committee meeting. The school makes many purchases and Dr. Carpenter wants the board to be keeping an eye on things and looking for anything irregular, not questioning every single expense. Turner has a big job, and I do not want to add anymore to her plate. During these finance oversight meetings, she will be there to answer any questions or concerns. Perhaps we can schedule the first meeting ASAP to alleviate any concerns. If you have any questions, please let me know. I will be handling some real estate today, so I won't be available until later. Have a great day!

Taken in its entirety, this email is not the equivalent of "essentially inform[ing] Mr. Baird that he needed to back off"<sup>4</sup> (Fishbane 11) and the email, when read as a whole does not draw that same conclusion. Instead, Mrs. Lichter gave information to Mr. Baird about the appropriate forum to ask his questions and urged him to schedule a "meeting ASAP" to alleviate his concerns. Mrs. Lichter's comments regarding the treasurer's role are similar to those found in Mr. Carpenter's training materials, which were referenced by Mr. Baird in an email to Mr. Lichter, Mrs. Lichter's Husband. The information is as follows:

Financial Management and oversight of financial management are two different responsibilities. Three of the board's key purposes in the its *oversight of financial management* are to ensure that the school's money and assets are being:

1. used only in pursuit of the outcomes (i.e., mission directed).
2. properly accounted for, and
3. safeguarded from unnecessary risk.

The primary way the board achieves this purpose is *not* by reviewing financial statements (although that should be occurring). The primary

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<sup>4</sup> Mr. Fishbane's conclusion based on this email alone, without having spoken to Mrs. Lichter is a demonstration of the fault that the Firm finds in Mr. Fishbane's methodology.

mechanism for financial oversight is the enactment of robust policy and rigorous board monitoring.

Based upon the Firm's review of the evidence, we do not find that Mr. Baird was prevented from performing his duties as Treasurer. Further, the current Treasurer feels comfortable that he is able to fully perform his duties. As such, no further corrective action is needed on this issue.

## **II. Sunshine Violations**

This Firm did not find any Sunshine Law Violations, with the exception of Mr. Baird's September 29, 2016 email to Mrs. Lichter. The Fishbane Report made the following findings in regard to Mr. Baird's allegations and perceived Sunshine Violations:

It was not appropriate for Mrs. Lichter to write to Mr. Baird on September 26, 2016, subsequent to listening to Mr. Hull's complaints...

Board Member Lichter never informed the Board and the public at the October 4, 2016 Board Meeting nor any time thereafter, of the email to Mr. Baird, its contents, the response her email invited or Mr. Hull's complaining to her that led to her emailing Mr. Baird. The email exchange involved both Board and operation matters for which it was foreseeable that they would come before the Board for review, discussion, and action...As a consequence, it is submitted that Mrs. Lichter's actions created a meeting outside of the Sunshine in violation of the Florida's Sunshine Law, drawing Mr. Baird into the web of her actions by inviting his response.

Further, Mr. Fishbane found the following:

When Mr. Hull complained to Board Member Mrs. Lichter about the burdensomeness of Mr. Baird's requests, she should have brought it to the Board to discuss and not have written to Mr. Baird to tell him how she felt he should handle his duties as a Board Treasurer.

Mrs. Lichter's email to Mr. Baird dated September 29, 2016 at 10:58 a.m. was not a Sunshine Violation, as it was the first communication from one Board Member to another. An e-mail communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council member's comments or responses involving foreseeable action by the council. (AGO 01-20). It is Mr. Baird's response dated September 29, 2016

that constituted a violation of the Sunshine Law as his response created an exchange of responses.

Mrs. Lichter's email to Mr. Baird on October 7, 2016 is not a Sunshine Violation. Mr. Baird had already resigned from the Board so any communication from Mrs. Lichter to Mr. Baird at that time was not between Board Members.

An objective review of the communications from Mrs. Lichter to Mr. Baird shows that Mrs. Lichter may have overstepped her responsibilities pursuant to the MCA Policies Manual dated May 9, 2016. Under Policy B 1.0- Board Membership, Board Duties and Responsibilities, Paragraph 2, a Board Member should never become involved in specific management issues unless directed by the Board. Further, Paragraph 9 states that, a "Board Member who learns of a problem should bring that problem to the attention of the Board. A Board Member should not attempt to deal with such a situation on an individual basis." Mr. Hull and Mr. Baird individually and separately made Mrs. Lichter aware of issues between the two of them regarding Mr. Baird's role as Treasurer. Mrs. Lichter chose to send an email to Mr. Baird instead of addressing it at a Board Meeting so as to not embarrass him. However, pursuant to the Manual, she should have brought the problem to the Board at the October 4, 2016 Board meeting or thereafter. Likewise, her email to Mr. Baird on October 7, 2016 should have been brought to the attention of the Board as it concerned problems of the school.

As part of the Mediation Settlement Agreement, governing board members and staff received additional training on August 6, 2019 on the Sunshine Law, ethics, FERPA, ESE, and Chapter 39. Outside counsel has provided additional, one on one discussions with Board Members on the subject of communication outside of Board Meetings. Furthermore, MCA has hired a new compliance officer, who is a licensed attorney, to assist it with compliance issues. In light of the fact that these emails have now become public discourse, in our opinion no additional cure needs to occur.

### **III. Board Governance and Oversight**

The MCA Board did not hold or conduct meetings wrongfully or impermissibly. Mr. Baird raised concerns that there had been many multiple instances of Sunshine Law violations by the MCA Board. The first such issue raised was a lack of quorum at Board meetings. Mr. Fishbane found in his Report that on multiple occasions, meetings were held and, business transacted, without a quorum. He identified the dates as follows:

1. January 26, 2018, the only person present was Board Member Lichter. Board Members Miller and Longenecker called in and appeared by phone.
2. April 26, 2018, Board Members Lichter and Miller called in and appeared by phone. Board Member Longenecker was absent. Staff members Marshall and Turner were at the meeting.
3. June 30, 2018, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.
4. December 14, 2019, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.

Accordingly, it is submitted that all official actions and business undertaken at the January 26, 2018, April 26, 2018, June 30, 2018, and December 14, 2018 Board Meetings are null and void.

The Board did not hold or conduct meetings wrongfully nor impermissibly and did not violate the law, MCA Bylaws, nor the 2017 Charter.

The 2017 Charter Application, Section 9: Governance, provides that a majority of the voting members of the Governing Board shall constitute a quorum. Further, Governance of the School will be in accordance with the Bylaws or other organization documents of the School.

Pursuant to Paragraph 4.14 of the MCA Bylaws executed on August 16, 2012, a quorum of directors is defined as, "a majority of the board of directors then serving shall constitute a quorum. The act of a majority of the directors present at a meeting which a quorum is present shall be the act of the board of directors unless a greater number is required by law, by the provisions of the articles of incorporation, or by these bylaws." Further, pursuant to Paragraph 4.15, a director participating by means of communication equipment, "is deemed to be present in person at the meeting." In addition to the MCA Bylaws allowing electronic participation, Florida Statutes 1002.33(9)(p)(3.) states, "Members of the governing board may attend in person or by means of communications media technology." Such telephonic appearance is permitted by law.

Even though it is clear in the Bylaws that members participating electronically are deemed to be present for establishing a quorum, the MCA Policy Manual has conflicting provisions. The Policy Manual states that, "in circumstances where attendance at the

meeting is impossible, the Board member may participate electronically provided that all members and the public are able to hear all discussion and votes. Members who are participating electronically may not be considered in the count to determine whether quorum has been met.” The question becomes which document controls, the Bylaws or Policy Manual. Pursuant to Robert’s Rules of Order, the Bylaws control over the Policy Manual. Robert’s Rules of Order, (11th Edition, 2011). Therefore, any meeting where members appeared and participated by phone was appropriate and any matters voted on during the meetings was proper.

The Firm finds that a quorum was established on the following dates: January 26, 2018, April 26, 2018, June 30, 2018, and December 14, 2018. Any and all business that was voted on during those meetings, including the Fiscal Year 2019 Budget and election of Mr. Bolduc was conducted and voted on appropriately. In order to prevent future confusion, it is recommended that the Policy Manual be amended to reflect the language in the Bylaws that a director participating by means of communication equipment is deemed to be present in person at the meeting.

#### **A. Issues with Minutes and Agendas**

The Fishbane Report finds fault with many of the Board’s procedures regarding agendas and minutes. It is stated that, “there is very limited, often with no descriptive narrative to appraise a reader of what transpired at a given meeting.” Further, Fishbane’s Report noted several instances where the Minutes “are contradictory and confusing to the reader.” While there are some inconsistencies in some of the minutes, on the whole, the minutes are consistent with Robert’s Rules of Order and Dr. Carpenter’s recommendations.

A review of the Board minutes shows that prior to the summer of 2016, the MCA Board Minutes are highly detailed and after the summer 2016, there is considerably less detail. The MCA Policy Manual provides the following requirements for Meeting Minutes and Agendas in relevant part below:

##### **Minutes**

The Board Secretary shall cause to be kept official minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member on roll-call votes, and any other information required to be shown in the minutes by law, which shall be available to the public.

The minutes of Board meetings shall be considered at a future meeting where they shall be read (unless waived by law), corrected, and approved. The approved minutes shall be signed by the Secretary and the Chair.

The approved minutes shall be filed in the Board office in a prescribed minutes book as a permanent record of official Board proceedings.

The approved minutes shall be forwarded to the MCA Website webmaster for posting.

### Agendas

The agenda for Board meetings, hearings, and workshops shall be prepared in time to ensure that a copy of the agenda may be received at least three (3) days before the event by any reasonable cost of the copy...

1. The Agenda for each Board meeting shall be sent to the MCA Webmaster for posting on the MCA Website.
2. The agenda of the regular monthly meeting or special meetings shall be accompanied by descriptive materials from the Principal or designee of information relating to the MCA Board with such recommendations as she/he shall make. Attachments will be uploaded to the MCA server for Board Review.

Mrs. Lichter stated that the Board attended a Governance Training session with Dr. Carpenter in the summer of 2016. During the training, Dr. Carpenter discussed the importance of board minutes and their proper drafting. He stated that the minutes should not be a verbatim recitation of the events and discussions at a meeting. Instead, the minutes should state what action took place, a motion and how it was voted, the outcome and a brief discussion. Mrs. Lichter also explained that Dr. Carpenter provided an example of "what to do and what not to do" with board minutes. She recalled that the MCA Board minutes mirrored the "what not to do" category of providing too much unnecessary detail. She admits that prior to summer of 2016 that the meeting minutes were very detailed and that after that time, the meeting minutes became briefer pursuant to the advice of Dr. Carpenter.

Ms. Miller was also interviewed regarding this issue. She recalled that Dr. Carpenter stated that the minutes were not supposed to be a "he said/she said" record of everything discussed at the meeting. Rather, the minutes were to make a permanent record of the type of meeting held, the time, the place, attendees, agenda, and specifically anything voted upon by the board or any item the board resolved to take action on or continue to pursue. She stated that her memory of this training, though a few years ago is clear, as she was aware that for years, according to Dr. Carpenter's advice, she as



Secretary had been going into too much detail. After this training, she stated she immediately corrected her approach to follow best practices as provided by Dr. Carpenter.

Mrs. Lichter and Ms. Millers' comments regarding board minutes are substantially similar to the requirements of meeting minutes as laid out in Robert's Rules of Order. Robert's Rules of Order defines minutes as "a written record of what is done." Robert's Rules of Order, (11th Edition, 2011). More precisely, the minutes should contain, "mainly a record of what was *done* at the meeting, not what was *said* by the members." The Secretary is responsible for drafting the minutes. The minutes should be divided into four parts: the first paragraph, the body, the last paragraph, and the signature. The body of the minutes should include the motions taken and the resulting votes.

A review of the MCA Board Minutes shows that the Board created a form populated template for Board meetings that include the requirements of Robert's Rules of Order. An overview of the minutes also shows that at each meeting the Secretary recorded the members present, the reports of officers, if any, the motions taken, the votes recorded, discussion of new business, if any, policy updates, if any, the time the meeting adjourned and the secretary's signature. Admittedly, there are some errors in the Minutes, but overall, they substantially meet the requirements of Robert's Rules of Order and no additional detail is required.

Contrary to the Fishbane Report, the requirements of Florida Statute Chapter 286 that apply to School Districts do not apply to charter schools and cannot be the basis for finding a violation of the Charter Contract.<sup>5</sup> The Board was under no obligation to post detailed, descriptive Board Minutes nor was it required to post attachments prior to the Board meetings. The Board has not violated its policies as the policies only require the Agenda to be posted, not attachments. Thus, the Board has not violated any requirement of the Charter Application or Contract. McCrady and Associates, hired by MCA for their yearly audit has also independently verified that the board minutes are posted on the website each year within the year. Based on its testing, McCrady did not note any deficiencies regarding this requirement.

A review of the Minutes specifically cited in the Fishbane Report shows that there have been some errors in the dating of Meeting Minutes. The first such issue as cited by Fishbane's Report, is the August 2, 2016 Board Meeting. The Minutes associated with the August 2nd meeting on the MCA website are dated the same date. However, if one selects the minutes for the January 10, 2017 Board Meeting, the Minutes for that Meeting are also

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<sup>5</sup> The only applicable portion of Chapter 286 to charter schools, is Section 286.011, F.S. as specifically referenced in Section 1002.33(16)(b)(1), Florida Statutes. Section 286.011 requires that, "The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection."

dated August 2, 2016. The Minutes associated with the January 10, 2017 Meeting (although dated August 2, 2016) clearly reference actions taken up at the January 10, 2017 Meeting, based on the Agenda for the January 10th Meeting (i.e. Approval of Minutes from the November 11, 2016 and December 9, 2018 Meeting and review of Policy) 5.0). This is clearly a form population/typographical error. As mentioned previously, the Board uses a template for their Meeting Minutes and many of the fields are automatically populated. A review of the remaining Meeting Minutes referenced in Fishbane's Report shows a similar pattern. For example, there are two sets of Minutes dated March 24, 2017. A closer look at the MCA Website shows that the Minutes associated with the May 3, 2017 Board Meeting are dated March 24, 2017. However, it is clear from the May 7, 2017 Agenda that those Minutes should be dated May 7, 2017 and not March 24, 2017.

The Board acknowledges that there are some inconsistencies in the Meeting Minutes regarding population and/or typographical errors. None of the inconsistencies appear to be severe in nature and the Firm recommends that the Board more carefully review the Minutes before approval to ensure that all dates are correct. Further, the Board has agreed to amend some its procedures, although not required by statute. The Mediation Settlement Agreement states, "Mason will attach documents in advance to be published along with agendas discussed or reviewed by the Governing Board in order for the public to access those documents in advance of the meeting." Further, MCA has hired a new compliance officer, who is a licensed attorney, to assist the Board in ensuring the proper procedures are followed. The Firm finds that this issue has been appropriately resolved.

#### **IV. School Advisory Council and Employment Committee**

As with the Finance Committee and the Audit Committee, the Fishbane Report found fault with MCA not having either a School Advisory Council (hereinafter "SAC") or an Employment Committee pursuant to the MCA Charter Application. Further, he raised the issue that there was no Parent/Teacher Committee Association (hereinafter "PTCA") after May 2016. While MCA did not follow the formalities of the Charter Application, the Board functioned effectively as the SAC Committee and Employment Committee.

SAC's responsibilities are defined in the school's Charter Application as follows:

- (1) Work with the school Principal and give advice, consistent with state and charter school rules and policies, on policies relating to instructional issues and curricula and on the school's budgets.
- (2) Where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect

students and school academic programs to business resources and opportunities.

(3) Serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.

(4) Hear grievances from parents according to the Parent Grievance Policy.

(5) Assist the Governing Board in filling Board vacancies.

The Employment Committee is not a part of the School's Charter Application. However, the Board enacted a Management Compensation Review Policy. The Policy B 17.0, states in pertinent part:

Board Approval. The Employment Committee will obtain research and information to make a recommendation to the full board for the compensation (salary and benefits) of the Principal (and other highly compensated employees or consultants) based on a review of comparability data...

Concurrent Documentation. To approve the compensation of the Principal (and other highly compensated employees and consultants (the board must document how it reached its decisions, including the data on which it relied, in minutes of the meeting during which the compensation was approved...

Mrs. Lichter was interviewed regarding the SAC and Employment Committee issues. She stated that the Board did not have a separate SAC or Employment Committee; rather, the Board as a whole, followed the procedures for the individual committees. For example, the Board heard parental grievances where necessary and worked with the school on policies relating to instructional issues. Further, she stated that the PTCA dissolved itself after there was controversy on how its funds should be spent.

It appears that the Board was not following the formalities of the Charter Application by not having a separate SAC committee, but the Board was functioning as the committee. Further, the Board was not following the formalities of the Policy Manual by not having a separate Employment Committee. The lack of a separate SAC and Employment Committee appears to be a technical violation, but one that cannot and has not been rectified.

The Mediation Settlement Agreement provides that the Board will have a School Advisory Council and such committee will be in place by October 15, 2019. The Board had previously decided to remove the requirement to have a separate Employment Committee. Further, as stated above the school has hired a new compliance

officer, who is a licensed attorney, to ensure it is in compliance with all procedures. Therefore, the Firm finds that the issues presented have been resolved.

## **V. Board Membership – Election**

The Fishbane Report stated that the Board has “disregarded its own By-laws and Policy in connection with the Board Member election/selection process.” He found that Board Members have continued on the Board with no annual election. The status of the members of the Board is in compliance with Robert’s Rules of Order.

To review this issue, the Firm first looked to the MCA Bylaws and Policy Manual. The MCA Bylaws, Paragraph 4.4 states that, “the board of directors shall elect directors annually. The directors elected may include some or all of the existing directors”. Further, the MCA Policy Manual states that the, “Directors of Mason Classical Academy shall be elected annually by the Board of Directors at the annual meeting of the Board... *Each officer shall hold office until his or her successor shall have been duly elected.*” (Emphasis added). Routinely, the Board has elected new members as old members resigned.

The Board acknowledges that there was never a formal vote to reelect the remaining board members each year. The MCA Policy Manual is silent on how the Board Members will be elected each year. Robert’s Rules of Order states that, “in the absence of a rule establishing the method of voting, the rule that is established by custom, if any, should be followed, unless the assembly, by adoption of any incidental motion or incidental main motion, agrees to do otherwise.” Robert’s Rules of Order, (11th Edition, 2011). The Board created the custom that it would elect new Board members as there became a vacancy and the elected members would remain annually until such time as they wished to resign. Each year, the Board members reaffirmed their participation in the Board through their actions (i.e. providing conflict of interest statements, attending Board Meetings, filing reports, etc.). It is true that Board Members Mrs. Lichter and Ms. Miller have remained continually in place as President and Secretary. However, this is not in spite of the MCA policies, but because of its own Policies. As stated above, each officer hold’s office until his or her successor is elected. As no new president or secretary has been elected, Mrs. Lichter and Ms. Miller have properly remained in their elected posts.

As part of the Mediation Settlement Agreement, MCA agreed to increase the governing board from three (3) to five (5) members by October 15, 2019, with staggered, 1, 2, and 3 year terms. At the time of writing this Report, the Board has elected two new members, bringing the number of Board Members to five and have approved the staggered terms for members. This issue, to the extent it is an issue, has been resolved.

## **VI. Governing Board Oversight of Policies – First and Second Readings**

The Fishbane Report made findings that the Board often conducts a First Reading of policy changes without holding a Second Reading. Instead, he alleged the Board would place items on the Consent Agenda and no Second Reading would occur. He made findings that the MCA Board failed to conduct a Second Reading for the public to review or open discussion held by Board Members about such rule making for the school.

Neither the Charter Application, the Contract, nor the Bylaws contain any requirement regarding the adoption of new MCA policies. The MCA Policy Manual provides the sole procedure for the adoption of new MCA Board Policies and the revision or retraction of existing policies. The Policy Manual includes specific details regarding the use of First and Second Readings. The Policy Manual also defines Consent Agendas as follows:

The Board shall use a consent agenda to keep routine matters within a reasonable time frame.

A member of the Board may request any item be removed from the consent resolution and defer it for a specific action and more discussion. No vote of the Board will be required to remove an item from the consent agenda. A single member's request shall cause it to be relocated as an action item eligible for discussion. Any item on the consent agenda may be removed and discussed as a nonaction item or be deferred for further study and discussion at a subsequent Board meeting if the Principal or any Board member thinks the item requires further discussion.

Mrs. Lichter was interviewed regarding this issue. She stated that the Board would have a first reading and have discussions at that time regarding the proposed policy. At the next meeting, the policy would generally be placed on the consent agenda. She stated that she believed placing the policy on the consent agenda constituted the Second Reading. If at any time any board member or member of the public wanted to discuss the policy further, the policy could be removed from the consent agenda and the item discussed. She also stated that often, the policies placed on the consent agenda were policies that MCA was required to enact due to new statutory changes. By statute, MCA is not required to have first and second readings.

Robert's Rules of Order describes consent calendars as a "useful tool for disposing of such items of business including a large number of routine or noncontroversial matters." Robert's Rules of Order, (11th Edition, 2011). "[C]ommonly, when such a matter has been introduced or reported by a committee for consideration in the assembly, its sponsor, or, sometimes, and administrator, may seek to have it placed on the consent

calendar.” MCA’s definition of the consent agenda is in line with Robert’s Rules of Order’s definition of consent calendars.

Mrs. Lichter is correct that by statute, the Board was not required to have First and Second Readings. However, the MCA Policy Manual in effect prior to September 2019 required two readings. We could not find any authority that the consent agenda or calendar could be utilized as a Second Reading. Therefore, the Firm finds that MCA has not technically followed their own Policy Manual. We see this as an issue of compliance. This violation appears to be technical and there does not appear that any harm was done in this practice. If any member of the public or Board Member had questioned a policy, the policy could be removed from the consent agenda and full discussions had. We are not aware of any objection to a policy that was raised by a member of the public.

As a cure to this issue, MCA enacted a new Policy Manual on September 26, 2019. Pursuant to the updated Policy Manual the requirement for the Second Reading has been removed. Furthermore, MCA has hired a new compliance officer. The Firm finds that no additional corrective actions need to be taken on this issue.

## **VII. Parker Family Incident**

The reaction of MCA to the concerns of Valerie Parker and behavior of Mrs. Parker’s child was addressed in the Fishbane Report under the discussion of MCA Board and Administration Oversight. This was one of a number of events which the District focused upon independently, in the sense that this event was not part of Mr. Baird’s Complaint.

The events surrounding these incidents are laid out in Fishbane’s Report. This Firm has chosen not to address the specific factual allegations in order to protect the privacy of the student involved. Mr. Hull and Mr. Whitehead were interviewed regarding these incidents and their overall response was that the incidents were quite different than those described by Mrs. Parker and included in Fishbane’s Report. The records reviewed do not support Mrs. Parker’s perception of the events.

After the final incident occurred with the Parker child, on September 15, 2015, Mr. Hull informed Mrs. Parker of the school policy concerning accidents and informed her that her child could not meet the Hygiene Policy and could no longer attend MCA. Mr. Whitehead was present for this discussion and confirms that Mr. Hull provided this information in a professional manner. Mr. Whitehead walked Mrs. Parker and her child out of the school.

On September 23, 2015, Mrs. Parker wrote an email to Mr. Whitehead concerning a number of her complaints on the “school-imposed bathroom restrictions,” which she believed were “unorthodox practices.” To summarize, Mrs. Parker expressed her

concern that elementary students were not given sufficient opportunities to use the bathroom during the day. To support this, she expressed that a different student had told her that Mr. Hull “advised the children they need to use the bathroom at home” and that this same child felt that using the bathroom at school was frowned upon; she was concerned that students were getting their names on the board when not returning promptly from the bathroom. Mrs. Parker listed a Miss Hummel as a math teacher who did not allow students to use the restroom at all during math class and who required students to sit out recess if they had to use the bathroom during her class. Mrs. Parker’s email then returned to the issue pertaining to her own child, expressing on her child’s behalf that he was afraid to interrupt the teacher. The email went on to describe the email correspondence that Mrs. Parker had with Mrs. Huck concerning the September 11 incident. Mrs. Parker then recites the story of another child having a bathroom incident on September 16, 2015<sup>6</sup> (an event for which Mrs. Parker was not present and thus did not witness first hand) and she describes her interpretation of that event, which reflects poorly on MCA. Mrs. Parker ends the email with a statement of support for the school and “calling on [Mr. Whitehead] to please make these things right. I care very much about this school. I want it to flourish and succeed. I was one of those parents involved from the beginning. My heart is here, even though my child was judged unfairly, far too harshly, and [REDACTED] was unjust. What is happening here is very concerning. It must be addressed and remedied for both the mental and physical health of our children for the good standing of the school.”

The above email was sent at 11:01 a.m. Mr. Whitehead responded at 12:39. Mr. Whitehead’s response can be summarized as follows. He intended to “forward this on to all related personnel for further review;” that “No child is told that they are not allowed to use the restrooms;” and that the bathroom incident that occurred on September 16 did not result in discipline for the child. There was another exchange between the two of them at 12:39 pm. and 12:56 pm.

Mr. Whitehead was asked about this email exchange with Mrs. Parker. He acknowledged that he reviewed the email and forwarded it. Given that his interview took place four years after the event, he could not recall exactly to whom he forwarded the email, but believes it would have been forwarded to Mr. Hull and the Guidance Counselor Sandra Van Vlymen. Mr. Whitehead did not receive any response to the email and did not have further communications with Mrs. Parker on behalf of the school.

Subsequently, on September 25, 2015, Mrs. Parker separately emailed then MCA Board Members Byron Donalds and Matt Mathias in which she made a formal grievance concerning the dismissal from program of her youngest child. Most of this email was a

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<sup>6</sup> The September 16 incident did not involve Mrs. Parker’s children, yet she repeatedly links this event with her own child’s event as evidence of an institutional problem.

copy of the email she had sent to Mr. Whitehead. In this email, Mrs. Parker does directly state that the intent of her message is to appeal the expulsion decision by the school and she also used the term “Grievance” in the subject line, thus making her intent clear. On October 2, 2015, Mr. Donalds forwarded the Grievance to Mr. Hull and the other Board Members. There is no record located that Mr. Donalds took any action on this email prior to that date. No record has been located to determine what, if anything, Mr. Mathias did with the email from Mrs. Parker. No response to Mrs. Parker was found.

October 3, 2015, Mrs. Parker directed her grievance to Dr. Messer, the District’s Director of Charter Schools. By this date, and in this email, Mrs. Parker acknowledged that her family had withdrawn her older child from MCA on or about October 2, 2015.

Pursuant to interviews with Mrs. Lichter and Ms. Miller, by the time Mrs. Parker’s Grievance came to the attention of the entire Board, Mrs. Parker had already removed her second child from MCA. At that point, they considered the Parker Grievance moot as it related to her children. No further action was taken with respect to Mrs. Parker’s grievance.

On or around November 9, 2015, an anonymous<sup>7</sup> DCF complaint was made against MCA. Later that week, NBC-2 aired a story about the DCF investigation into MCA and Mrs. Parker and the story of the expulsion of her child featured heavily in the story. The story was also covered by the Naples Daily News. Mrs. Parker was clearly named in the press-coverage and she was made no effort to remain anonymous.

During the time period between November 9 and November 13, 2015, there were Facebook posts made by Mr. Whitehead, Mrs. Lichter and Ms. Miller, which Mrs. Parker found to be troubling. On November 13, 2015, Mrs. Parker sent an email to Superintendent Kamela Patton, Mr. Fishbane and Dr. Messer. This particular email was focused on Mrs. Parker’s reaction to these social media posts.

First, in this email, Mrs. Parker complained that Mrs. Lichter, who at that time was also a member of the District School Board, had targeted her on social media. The specific post that Mrs. Lichter made was posted as a reply to a Facebook post made by one Amy Glidden Beall, in which Ms. Beall states “I stood up for the school on the NBC2 post, I am so irate over this I could spit nails!” In a reply to this particular comment, Mrs. Lichter stated as follows:

“Thank you for your support! Perhaps you and others should personally let Ms. Parker know how you feel.”

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<sup>7</sup> In a November 13, 2015 email, Mrs. Parker denies initiating the complaint. Further the source of DCF complaints remain confidential with DCF.



In her email, Mrs. Parker interprets this post by Mrs. Lichter as a suggesting that “parents who support her position harass/bully my family and tell me how they feel.” While Mrs. Parker’s personal and subjective reaction to this particular post is understandable, an objective reading of the Facebook post does not demonstrate that Mrs. Lichter was soliciting any form of harassment or bullying on behalf of the school. Mrs. Parker’s choice to take her story to the press resulted in her identity being shared on one side of a particular event that caused strong reactions in others.

In the November 13 email, Mrs. Parker also addressed a Facebook post from Mr. Whitehead and a responsive post from MCA Board Member Ms. Miller. Based upon the documents received in this investigation from the District, it appears that Mrs. Parker included screenshots which show the social media posts that she had referred to in her email. Included in the records was a screenshot of this post from Mr. Whitehead. The date of this post is important, but the post is NOT DATED, rather it states that it was posted on “Tuesday at 5:37 PM.” The records do not demonstrate exactly when this post was made by Mr. Whitehead, but through some deduction, this Firm can deduce that the post was made on Tuesday November 10, 2015 (which is the Tuesday preceding the Friday November 13, 2015 email from Mrs. Parker). This investigation has also determined that the Naples Daily News article which first mentioned Mrs. Parker, was published on Thursday November 12, 2015. This particular article references a DCF investigation that was initiated on Monday November 9, 2015. The NBC-2 television news story, that also featured Mrs. Parker aired on Wednesday November 11, 2015. Mrs. Parker features more prominently in the NBC-2 news story than she does in the newspaper article.

According to this timeline, Mr. Whitehead’s Facebook post occurred before Mrs. Parker’s story went public in either the Naples Daily News or with NBC-2.<sup>8</sup> Thus, it could not have possibly been made in reaction to any press reports. The timeline indicates that the post was made after the DCF Investigation began at the school on Monday, November 9, 2015.

As background, Mr. Whitehead spent his career as a law enforcement officer with the Naples Police Department. Following his retirement, he was hired by MCA to be the Assistant Principal tasked with leading school discipline. On the side, Mr. Whitehead hosts a weekly radio talk show. As he self-describes his show, Mr. Whitehead hosts a politically conservative local talk show. Mr. Whitehead uses his Facebook page to promote his radio show, both previewing his upcoming guests, and then thanking his guests after the show. During the week of November 9-13, 2015, Mr. Whitehead made

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<sup>8</sup> This timeline contradicts the finding in the Fishbane Report that Mr. Whitehead’s post was made as part of a “response to the media reports” (Page 31).

two or three posts<sup>9</sup> that appear to have been included in Mrs. Parker's email to the District.

**November 9, 2015 Post:** First, on Monday November 9, 2015, there is a post concerning the appearance of NBC-2 at the MCA campus to question Mrs. Lichter and Mr. Whitehead. In this post, Mr. Whitehead specifically identifies that he is posting it on Veteran's Day, thus the timing of this post is pretty clear. The post is primarily directed at his supposed distaste of the media. This post does specifically refer to MCA, and "the lunatic agenda of a handful of disgruntled parents who want to shut down charter schools." The post also refers to the person or persons who contacted DCF and the media as "cowards." He then states that the person who initiated the DCF investigation as doing so "'secretly and w/o revealing their identity' while the participants in the JWS show stand tall 'Live and Armed'!"

If you are familiar with Mr. Whitehead's show, you would recognize his familiar refrain "Live and Armed," which apparently references that his show is aired live and that he and perhaps his guests are possibly "armed" during the broadcast. This is consistent with the conservative stances he takes on his show.

Mr. Whitehead, when asked about this post, explained that a lot of what he says is hyperbole laden in an effort to promote his show. As the host of a talk show, he is prone to exaggeration and hyperbole as this is what his listeners wish to hear. Mr. Whitehead feels that when he is promoting his show, as well as when he is on the air, he is wearing the figurative hat of a radio personality and his speech and actions are consistent with such a personality.

In reading this post, an objective reader will certainly recognize the hyperbole and exaggeration that appears to be Mr. Whitehead's aim. An objective reader will also see that this post does not include any specifically aimed threat to any person. While voicing distaste for the person who reported to DCF, Mr. Whitehead does not name any individual or promote any violence or harassment of any individual. If Mrs. Parker was not the source of the DCF inquiry, then there would be no reason for her to feel that this message was in any way directed at her.<sup>10</sup> In her November 13 email, she does not focus very much on this particular post.

**"Tuesday" Post:** The second of the Facebook posts from Mr. Whitehead is the focus of Mrs. Parker's November 15 email. The Tuesday post differs from the Monday post, in that he does not mention MCA, DCF, or any person related to either entity.

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<sup>9</sup> The screenshots of the posts that are included in the District's records are not dated, so the investigation cannot pinpoint the exact dates of the posts, but three such posts appear to have been made that week.

<sup>10</sup> The Fishbane Report concludes that Mr. Whitehead was "indirectly attacking" Mrs. Parker on social media. This investigation cannot reach this conclusion based upon a review of the posts and after speaking to Mr. Whitehead.

This post targets anonymous sources and the intentional spread of falsehood. The initial paragraph of this post appears to be a simple commentary and opinion of the effect of making false statements against others and sharing Mr. Whitehead's opinions thereon. The second paragraph addressed Mr. Whitehead's opinion on honor. It is to this post, that MCA Board Member Ms. Miller purportedly authored a reply.<sup>11</sup>

When interviewed, Ms. Miller stated that she did not intend any threats by this post or to encourage any personal harm. Ms. Miller felt very hurt, both personally and on behalf of the school, by the DCF investigation into the school and this post was a reaction to her feelings. This post by Ms. Miller does NOT support the assertion by Mrs. Parker in her November 13 email that Ms. Miller was promoting personal harm. Ms. Miller has stated that in hind-sight, she would not have made this post as she was reacting emotionally to the setting but also asks that her comments be viewed in light of the highly emotional situation that existed at that time. Further, this comment by Ms. Miller was solely focused on the DCF allegations against the school, and as such had nothing to do with Mrs. Parker.<sup>12</sup>

In her email on November 13, Mrs. Parker stated clearly that she considered this Tuesday post by Mr. Whitehead as a serious threat and that she intended to report it to the "authorities." For purposes of this investigation this Firm will take Mrs. Parker at her word that she felt threatened. However, an objective interpretation of this post does not demonstrate any actual threat against Mrs. Parker or any specific person. The Tuesday post discusses anonymous persons who spread false information to damage another's reputation. As stated above, this post was made following a DCF investigation by an anonymous reporter. Mrs. Parker was not anonymous as she spoke openly to media outlets on her story. This post is clearly not pointed at Mrs. Parker.

**Date Unknown Post:** The records from the District include an additional post from Mr. Whitehead, but there is no date given. In this post, Mr. Whitehead makes statements concerning the confidentiality of reporting anonymous information to "State agencies such as DCF and local agencies as well." This post does not: name any specific person; it does not mention MCA; and, it does not mention any specific event. On its face, this post is not a threat. If a reader is taking liberties, an argument could be made that this post is a threat against whomever complained to DCF by publicly stating that

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<sup>11</sup> The way the screenshot is arranged suggests that it is a response to Mr. Whitehead's post, but such statement is not conclusive. Further, the reply by Ms. Miller is cut-off and the complete reply is not included in the records.

<sup>12</sup> The Fishbane Report makes a connection between Ms. Miller's post and Mrs. Parker (page 31) but such a connection is not supported by the posts and the timeline of events. Ms. Miller's post is clearly about the DCF Investigation. Everyone involved knows that Mrs. Parker was not involved in the situation leading to the DCF Investigation. The Fishbane Report inaccurately blends the events which lead to the DCF Investigation.

their identity can be obtained by a court order. Regardless of whether or not the post is legally accurate, this is just one interpretation of this post. The post is just as arguably interpreted as a mere statement of Mr. Whitehead's interpretation of the law and his continuing feelings on confidential sources. Mr. Whitehead was not asked specifically about this Post in his interview. But when asked about the other two posts, Mr. Whitehead pointed out that the issue of anonymous sources had political meaning beyond the MCA investigation, and that this issue had further reach than MCA and these messages were intended to stir the pot on this issue to garner an audience for his radio show that week. In total, there is not sufficient information to objectively conclude that this message was a bona fide threat against anyone, especially Mrs. Parker.

**Other Posts:** The District also reviewed other posts, which may or may not have come from Mrs. Parker's November 15 email, made by the Facebook profile for "CCEA – Collier Citizens for Educational Achievement" as well as others. The reviewed posts were certainly obnoxious and crude, and no person should have to read such comments. However, there is no evidence that MCA or anyone affiliated with MCA had any connection to the CCEA posts. Without more information, these posts are irrelevant.

**Conclusions pertaining to Mr. Whitehead:** This Firm understands that Mr. Whitehead has a radio show that allows him a persona that is perhaps similar or perhaps drastically different than his work day persona at MCA. Although an Assistant Principal for a school, Mr. Whitehead is still an individual and free to exercise his individual desires in any legally permitted manner. However, when doing so, Mr. Whitehead, and all MCA Board and MCA Administrative staff, need to be mindful that the public may not be as able to tell the difference between their different roles as they are. As an example, only, Mr. Whitehead will always be Mr. Whitehead, Assistant Principal, to the MCA students, parents and MCA community. He cannot take this hat off on the weekends and be someone else without his actions or words potentially reflecting on MCA as a whole.

As shown above, an objective interpretation of these communications does not show enough to warrant any corrective conduct. In the future, the Board and Staff of MCA should be mindful of their communication in any public or semi-public setting and make stronger efforts to refrain from saying things that can be misconstrued or interpreted in ways that would not reflect positively on MCA. In a Board Meeting on July 2, 2019, the Board affirmed that the Board and MCA staff would not engage in social media controversies, but rather would use social media only to convey information, such as school events and positive developments at MCA, etc.

**Mrs. Lichter's Email to The District School Board Members:** Mrs. Parker again became a cause of dispute in April 2019. As of April 2019, MCA had become aware that Mr. Fishbane was conducting an investigation. MCA became aware that the Parker incident was part of the investigation, only by reading an article in the Naples Daily

News. In this light, Mrs. Lichter was very frustrated that she was not being provided an opportunity to meet with Mr. Fishbane to explain her perspective and recollection on things. Mrs. Lichter felt that Mrs. Parker's statements to the media were inaccurate. Mrs. Lichter, being a founder of MCA, felt that Mrs. Parker's statements were "criminal" based on the inaccuracies when compared to the prior emails between Mrs. Parker and the school. Mrs. Lichter perceives herself as a staunch defender of MCA and has grown weary of the numerous "attacks" on the school since 2015. Mrs. Lichter, when asked, admitted to sending these emails and confirmed that she did so in an effort to allow the truth of the situation to be communicated to the Board.

As stated above, in the future, the Board and Staff of MCA should be mindful of their communication in any public or semi-public setting and make stronger efforts to refrain from saying things that can be misconstrued or interpreted in ways that would not reflect positively on MCA

### **VIII. Zuluaga Incident**

The Fishbane Report highlighted an incident regarding the Zuluaga family as an example of the failure in MCA's grievance policy and ongoing issues with Board and school staff professionalism. A review of the records and correspondence created contemporaneously with the incident and interview with the subjects involved provides an entirely different explanation of the events.

The Zuluaga child, a senior at MCA, sent an email on behalf of the senior class<sup>13</sup> to Mr. Hull on or about February 27, 2018. The letter begins with an apology to Mr. Hull for a senior skip day idea that the senior class had come up and went on to explain some of the frustrations and pressures the senior class was experiencing. The email does not need to be reproduced in length herein.

In response to this email, Mr. Hull met with the senior class on February 27, 2018. Mr. Hull, Mr. Whitehead and Mrs. Smith were all interviewed regarding the meeting. Mrs. Smith stated that Mr. Hull read the letter out loud to the class and would stop on occasion to discuss different sections. It was clear that Mr. Hull was upset and was speaking sternly, but Mrs. Smith was clear that Mr. Hull was not yelling or berating the children. She further stated that Mr. Hull did not single out any student, including the Zuluaga child. At the beginning of the meeting, Mr. Hull asked if the email was from all of them, and when they confirmed that he spoke to the class as if it were from all of them and did not speak to any one of them. Mrs. Smith stated that the Zuluaga child was outed based upon the child's specific responses to Mr. Hull's questions and the child's gesticulations, which drew everyone's attention. Mrs. Smith recalled that Mr. Hull did

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<sup>13</sup> There were nine (9) students that graduated in this Senior class.

say, in response to a section of the email he referenced that the students felt they did not have enough time, that the Zuluaga child had sufficient time to talk on the phone late at night with the Hull child. But this was not stated maliciously to target the Zuluaga child, rather was stated to contradict the claims in the email.

Mr. Whitehead was also interviewed regarding the meeting. Mr. Whitehead's recollection of the letter was that the students were complaining about not having a lot of time and their stress levels. Mr. Hull refuted their complaints. He does not recall Mr. Hull calling out any students directly or indirectly. Mr. Whitehead described the meeting as a "nonevent". He stated that Mrs. Zuluaga mentioned the meeting to him in passing and that she wasn't happy. He explained to her, that from his perspective that it was not a big deal. He stated that no child was threatened, no one was told they would be suspended, there were no disciplinary threats or mention of taking away awards. He said that Mr. Hull was simply challenging the complaint. To his knowledge no other parents of the senior class found issue with the meeting or filed a complaint.

Upon receipt of the email from the Zuluaga child and after the meeting with the senior class, Mr. Hull sent an email to Mr. and Mrs. Zuluaga requesting a meeting to address the issues in the letter. That meeting occurred at approximately 12:30 p.m. on Wednesday, February 28, 2018. After the meeting, Mrs. Zuluaga sent a follow-up email to Mr. Hull requesting an additional meeting as she believed, "that is important that we meet again to find the proper way to move forward." Mr. Hull promptly responded that he would not be able to meet until the following week and asked Mrs. Zuluaga to provide a date and time. Mr. Zuluaga responded on March 1, 2018 with a letter that begins by saying he and his wife were "sorry you could not find a time in your schedule for us to meet". That statement is not accurate. Mr. Hull requested that Mrs. Zuluaga provide her availability for the following week and that did not occur. The response from Mr. Zuluaga is stated in its entirety below.

Good evening Mr. Hull.

We are sorry you could not find a time in your schedule for us to meet, but we believe it is really important to find the truth of the situation, and considering that we are only three months away from graduation, we would rather have you listen to our concerns sooner than later

Regarding the yearbook, [Child] realized the error in [Child's] ways and hopes to resolve this issue right away. [Child] will be writing an apology letter to Ms. Lucas and meeting with her to edit [Child's] responses as soon as possible.

After a careful reading of the email [Child] wrote on behalf of ALL [Child's] classmates as you did verify with them, we find no reason at all to

consider this disrespectful in any way. Instead, we believe that [Child] was speaking up, which is what we have always taught [Child] to do.

Perhaps the email was not the right approach, but instead of complaining with [Child's] classmates [Child] had intended to approach you with something in hopes of looking for a better environment for [Child] and [Child's] classmates.

When we came to speak to [Child], we found a couple things which gave us reasons to be even more concerned about:

The way in which you reprimanded my [Child] ultimately embarrassing [Child] in front of [Child's] classmates by utilizing past, personal, and irrelevant incidents; yelling at [Child] and [Child's] classmates and humiliating [Child] by threatening to strip [Child] away from the awards [Child] earned so far is definitely not acceptable and will not happen again.

We have already spoken with our [Child] and given [Child] specific instructions to walk away if you chose to approach [Child] in those terms and to wait until one of us is present.

You need to stop the bullying to our [Child] with personal issues from [Child's] past.

A review of the record shows that no other emails were exchanged between the Zuluagas and Mr. Hull nor did the parties meet further. The next action that took place occurred on May 28, 2018, when Mrs. Zuluaga filed a grievance with the MCA Board. In her letter she alleged that the Zuluaga child had experienced bullying by Mr. Hull and that Mr. Hull, "has never been against using his position of power over my [Child] to his advantage..." She alleged that, "the students were met by rage of the principal..." Mr. Hull "read the email line by line in an extremely condescending tone, making fun of my [Child] and [Child's] writing, saying 'at least [Child] knows how to structure a paragraph.'" He "yelled at the students... and disregarded their personal comfort as he continued reading." He then, "used this opportunity to threaten to strip my [Child] of [Child's] awards and accomplishments [Child] had achieved at Mason including but not limited to [Child's] membership in the National Honor Society and her title as salutatorian. He yelled at [Child] in front of [Child's] peers, verbally harassing [Child] by claiming that an individual of [Child's] character is not deserving of these awards, and that he would personally find cause which states that the salutatorian of the school was also chosen based on their good character, which he claimed [Child] did not have." She also alleged that Mr. Hull, "took the time to raise personal and irrelevant concerns regarding the romantic history of my [Child] and his [Child] in front of the class, [Child's] teachers, and other members of the administration. My [Child] was crying and begging

him not to mention [Child's] personal relationship with his [Child], saying that those comments were 'irrelevant,' but that was not enough for him, and he continued to intimidate and ridicule [Child] in front of [Child's] classmates and his audience, abusing his power."

Mrs. Zuluaga requested that the evaluation of Mr. Hull, scheduled for the May 29, 2018 Board Meeting be deferred until her grievance could be heard. Her request was denied, and the Board voted unanimously in favor of Mr. Hull's evaluation. Meeting Minutes for the May 29, 2018 Board Meeting state the following, "Prior to the Principal Evaluation, Mrs. Zuluaga, a parent of two MCA students, filed a grievance with the Board of Directors. The grievance will be investigated by the individual board members and a response will be given at the next board meeting."

Mrs. Lichter was interviewed regarding the investigation into the senior class meeting incident. As part of her investigation: she interviewed all of the adults present during the meeting, Mr. Hull, Mrs. Smith and Mr. Whitehead; she reviewed the email from the senior class written by the Zuluaga child; and, she spoke to and emailed with Mrs. Zuluaga regarding the incident. Mrs. Lichter was unable to confirm many of the allegations made by Mrs. Zuluaga. Both Mr. Whitehead and Mrs. Smith disagreed that Mr. Hull yelled at the students. Mrs. Zuluaga's statements that the child was "begging him to stop" and that he "continued to mock [Child]" were denied by all three adults present at the meeting. The separate consensus was that the Zuluaga child self-identified with the letter and caused the attention to be focused on the Zuluaga child at times throughout the meeting. Mr. Hull did not directly or indirectly mention the Zuluaga child. They did confirm that Mr. Hull had called the student's ungrateful. Mrs. Lichter noted that no other parent complained about the meeting. Further, a few members of the senior class came forward after the meeting and apologized to Mr. Hull for the email that was sent.

The Board followed its Grievance Policy and the Board Members investigated the incident. The Board discussed this grievance at the July 16, 2018 Board Meeting. The Meeting Minutes reflect the following, "A grievance was filed by a former parent regarding a specific instance where multiple MCA administration members were present. Taking any and all input seriously, the MCA Board of Directors investigated the complaint and examined the statements of all concerned parties. After careful deliberation, the Board found no evidence that any further action was necessary."

Based on the Firm's review of the records and discussions with those present at the meeting, we conclude that Mrs. Zuluaga's complaint was unfounded. Mrs. Zuluaga alleged that she spoke to Mr. Whitehead about the incident and that she had not heard back from him on the matter. Mr. Whitehead stated that Mrs. Zuluaga did not lodge a formal complaint with him regarding the incident, instead she had mentioned it to him



in passing at the carline. Mrs. Zuluaga's perception from her letter to the Board, regarding that interaction appears to be different than Mr. Whitehead's. As Mrs. Zuluaga brought the incident as a formal grievance to the Board of Directors, Mr. Whitehead's response or lack thereof is not pertinent. No additional action needs to be taken on this issue.

The Fishbane Report goes into some length regarding emails sent from Mr. and Mrs. Hull (through Mr. Hull's personal email account) to the Zuluagas in the summer of 2018 regarding the Zuluagas' contact with one of the Hull children. The Fishbane Report details this incident as part of "multiple examples of Mr. Hull's confusion of boundaries between the personal and the professional, and the disregard of the privacy rights, reputations and sensitivities of others."

We do not find that the email correspondences from the Hulls to Zuluagas are relevant to an investigation into MCA. However, to the extent that The Fishbane Report finds fault with Mr. Hull as principal, the issue will be briefly addressed. The emails were sent from the Hull's private email account and not sent as Mr. Hull the "principal" but as Mr. Hull, the parent. Mr. and Mrs. Hull, as parents of a minor child, are allowed and entitled to decide who their child may interact with and whether any such contact should be allowed. The Zuluaga child, at the time of the emails sent in July 2018, was no longer a minor child, but the Hull child was still a minor. As such, Mr. and Mrs. Hull were in their right as parents to request the Zuluagas cease interacting with their child.

The Fishbane Report draws conclusions that the emails sent by Mr. Hull were "unsettling apparent" that the actions were at least partially in retaliation for the grievance filed by Mrs. Zuluaga. Mr. Hull denies this allegation. The Hull family has rules in place in regard to dating, cell phone usage, and communications. The Hull child was not allowed to date anyone from MCA while the child was a minor living in the parent's home. The Hull child and Zuluaga child dated and communicated via cell phone against Mr. and Mrs. Hull's wishes. Due to the Zuluaga child being of the age of majority and the Hull child being a minor child, the Hull family did not allow the relationship to continue. Mr. Hull believes that the Zuluaga's did not respect his and his wife's wishes and encouraged the relationship between the two children. Mr. Hull stated that this was the sole reason for he and his wife to email the Zuluagas regarding their contact with the Hull child and had nothing to do with the grievance filed by Mrs. Zuluaga. There is no reason to question Mr. Hull's sincerity on this issue.

Mr. Hull and Mr. Whitehead were interviewed regarding the emails sent between them during that time period. Mr. Hull and Mr. Whitehead are friends outside of MCA. Mr. Hull sought Mr. Whitehead's advice on how to handle the situation as a friend and due to his background in law enforcement. The emails between Mr. Hull and Mr. Whitehead were sent through their private email accounts, after school hours and in no

way referenced the duties or responsibilities of vice principal or principal. The emails, read objectively, should not have been included in an investigation against MCA, as the emails do not have anything to do with MCA policy or business.

## **IX. Alleged FERPA Violations**

The Fishbane Report alleged that Mr. Hull violated FERPA on five separate occasions when he sent confidential student educational information without parental permission to persons who were not in the zone of interests of persons who would otherwise have a legal access to the student's information. The five incidents of disclosing student education records are alleged as follows: 1) student records he posed relative to the Student of Virtue; (2) student whose educational records were emailed to Dr. Rodgers on December 1, 2017; (3) student whose record was sent to the District School Board on August 30, 2019; (4) the January 10, 2018 email obviously pertaining to the Donalds that was sent to Dr. Rodgers; and (5) the sending to Dr. Rodgers the February 28, 2018 email chain between Mr. Hull, the Donalds, and their child's teacher involving the child's education situation at MCA.

The Provisions of the Family Educational and Privacy Act (hereinafter "FERPA") are set forth in 20 USC 1232g and its regulations are set forth in 34 CFR §99.1, et. seq. Florida law has codified the FERPA provisions in FS §1002.22 and 1002.21. The relevant portions of the law are as follows:

Pursuant to 20 USC 1232(g)(a)(3), for the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

Pursuant to 20 USC 1232(g)(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following –

(A) *other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required; (emphasis added).*

Congress has defined a list of circumstances when disclosure is permitted without written consent. It includes:

§99.31(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

Pursuant to FS §1002.22 “agency” is defined as any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions as defined in this chapter.

The Department of Education in its publication, FERPA General Guidance for Students provides eligible students with information about FERPA. In the publication, the Department of education states the following regarding the exceptions to disclosure:

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

A school must inform eligible students of how it defines the terms "school official" and "legitimate educational interest" in its annual notification of FERPA rights. A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Pursuant to *School Board of Miami-Dade County v. Martinez-Oller*, 167 So. 3d 451 (Fla. 3d DCA 2015), FERPA unambiguously and exclusively entrusts the determination of “legitimate educational interests” with educational agencies and therefore a legitimate educational interest determination is an agency, not a court determination.

#### **A. Student of Virtue**

The Student of Virtue is an award given annually at MCA to one boy and one girl from each grade level. In May 2018, a faculty committee voted to present the Student of Virtue award to a particular student (hereinafter identified as “Student A”). Mr. Hull, upon receiving the decision from the committee sent an email to the committee questioning the committee’s decision. Mr. Hull disagreed with committee’s decision to bestow Student A with the award and pointed out the differences in his child’s performance versus Student A’s performance. He included a contrasting list of demerits,

tardies, GPA, scholarship, college acceptances and awards for each student. He stated, "I hope all the other students were given serious consideration and objectivity for this award." Further, "this decision is final, and I will honor that decision. I do not interfere with these types of matters as I feel strongly that the process should be honest."

Mr. Hull sent the email to create a clear standard for future awards. He was not trying to change the vote.

We disagree that this is a FERPA violation. Certainly, a committee of teachers considering the granting of an award to a student, has a legitimate educational interest in the child's school attendance and performance records. Mr. Hull as principal of the school did not violate FERPA in providing the student's information to the committee of teachers at the same school.

#### **B. Communications from Mr. Hull to Sheryl Rodgers**

The Fishbane Report identifies two separate communications from Mr. Hull to the District on student issues as alleged FERPA violations. In the first correspondence, dated December 1, 2017, Mr. Hull emailed Sheryl Rodgers and specifically identified the student, student's grades, grade level, and testing. In the second incident alleged in the Report, on August 30, 2018, Mr. Hull emailed the District School Board Member's about a parental matter and identified the parent, student, and the specific academic issue.

Mr. Hull was interviewed regarding the alleged FERPA violations and he stated that the standard for disclosure is whether or not there is educational relevancy in the communication. He believes that anything discussed with the Director of Charter Schools should be educationally relevant. In the first instance, he was requesting assistance from the District and wanted to keep the District apprised of issues regarding a parent's threat to sue the school. In the second instance, he requested that the school board refer all parental complaints to Dr. Rodgers. In the second email he confirms that the parent already reached out to the District School Board and identified herself, her child, and the issue she was complaining about. The second email complains about the way the District was handling parental complaints regarding MCA.

It is a widely accepted principle that an organization that oversees a school or school district, like the District has a legitimate educational purpose for accessing the educational record of a student for data collection purposes. For instance, the Federal Department of Education collects all kinds of student information directly from schools in order to come up with the school's grade. The MCA Charter contract has a number of references to MCA sharing certain data with the District in order to monitor its progress, develop services for the student, to report data necessary data to other organizations, etc.

When Mr. Hull contacted Dr. Rodgers in December 2017, he was requesting assistance from the sponsor (the District) on how to deal with a specific student/parental issue. It is of importance to note, that not once, in all of the correspondences from Mr. Hull to Dr. Rodgers, or anyone at the District School Board for that matter, did anyone point out that Mr. Hull may have been violating FERPA. As Mr. Hull was seeking the assistance of the sponsor on issues related to the school and which were a legitimate education interest, the Firm finds that Mr. Hull did not violate FERPA in his December 2017, email.

Mr. Hull's email dated August 30, 2018 identified a student and the particular issue with the student to the District. The email was in response to someone at the District providing advice to the student's parent regarding the student's particular issue. This information conflicted with MCA's advice to the parent. Mr. Hull stated his motive in the email was to request that the District not get involved in parental grievances without following the proper procedure. Pursuant to *School Board of Miami-Dade County v. Martinez-Oller*, 167 So. 3d 451 (Fla. 3d DCA 2015), the school is the determiner of the legitimate educational interest. Mr. Hull as an agent of MCA, determined there was a legitimate interest in his email to the District. The Firm finds the action taken is not a FERPA violation.

### **C. Mr. and Mrs. Donalds**

The Fishbane Report identified an issue that arose over several months between Mr. Hull, the school and the Donalds family. As a result of the issues, the Report identified four alleged FERPA violations regarding this issue: (1) the January 10, 2018 email obviously pertaining to the Donalds that was sent to Dr. Rodgers; (2) the sending to Dr. Rodgers the February 28, 2018 email chain between Mr. Hull, the Donalds, and their child's teacher involving the child's education situation at MCA; (3) Mr. Hull and MCA violated Donalds rights under FERPA when Donalds sought access to video evidence and MCA treated it like a records request (4) Donalds was never provided access to the documentation she had a right to review.

On February 8, 2018, Mrs. Donalds wrote to Mr. Hull and requested to review a video surrounding the incidents for which the Donalds' child was accused. The School responded that it would take a considerable amount of time and resources in order to provide a copy of the video. The incident occurred in a bathroom in a main school hallway during a class change and there were a number of children present in the hallway during that time period and on the videotape. MCA was not per se stating that the request was a record's request, but that due to the other children in the video and for their own privacy, the children's faces had to be redacted. The School described the amount of work and time that would need to be accomplished in order to redact the video. Mrs. Donalds never stated she could not afford the costs associated with the video.

Pursuant to 34 CFR §99.11, an educational agency or institution may charge a fee for copies of education records, unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student. Further, 34 CFR §99.12 makes clear that, if the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student. Therefore, MCA was required to redact the video that Mrs. Donalds requested and charge a fee for a copy of that record. As Mrs. Donalds refused to pay the fee for the video to be properly redacted, she did not receive access to the video. As the school was acting appropriately under FERPA, the fault lies with Mrs. Donalds in her failure to obtain the video, not the school.

There are a number of emails between Mr. Hull to Dr. Rodgers regarding the issues with the Donalds' children. As stated previously, in no email does Dr. Rodgers ever alert Mr. Hull that he is potentially violating FERPA in his providing of student information to her. In contrast, in an email dated January 24, 2018, Dr. Rodgers' offered her assistance and provided Mr. Hull a copy of the District's discipline matrix.

Mr. Hull was interviewed on these issues. He stated that he was in contact with Dr. Rodgers regarding the school's ongoing issues with the Donalds' children's behavior. Mr. Hull was very aware of the optics and politics as Mr. Donalds was a member of the Florida House of Representatives and Mrs. Donalds was a former member of the District School Board. Mr. Hull stated he was seeking the District's advice on how to best handle the issues due to the sensitivity of the matters. He stated that other than the discipline matrix he did not receive support from the District.

The Fishbane Report highlighted an email from Mr. Hull to Dr. Rodgers on January 10, 2018. In that email Mr. Hull requests Dr. Rodgers "thoughts before proceeding. In my opinion, these parents are not on board with school expectation and my need to be the first case of MCA requesting assistance for proper school placement of their children." The email does detail the issues that are ongoing with the children. As mentioned above, this is not the first and only email sent by Mr. Hull to Dr. Rodgers, but one in a series requesting assistance from the school board regarding these children.

The question is whether or not Mr. Hull had a legitimate educational purpose in providing the information to Dr. Rodgers. We find the answer is that in most instances he did as he was seeking assistance from the District on discipline related issues.

We find that no additional action is needed on this issue. As previously stated, Mr. Hull has resigned as principal and MCA administrators and staff have engaged in additional FERPA training.

#### **D. Former Faculty Member Issue**

The Fishbane Report stated that Mr. Hull's communications with a former faculty member were, "not only uncivil and a violation of MCA's civility policy (See, Policy SE 481.0, at pp. 78 in the April 2018 Volume and 78 in the January 2019) and unprofessional, but they are unbecoming of an educational leader."

Mr. Hull was interviewed regarding this incident and the email correspondence between Caleb Greinke and Mr. Hull were also reviewed. Mr. Greinke left MCA at the end of the 2017 school year. Upon his departure he gave the Hull child a number of books, including one volume, the Virtue of Selfishness. The Hull child was a minor at the time. Mr. Hull stated that this book was the exact opposite of the teachings of the classical education and the Hull's personal religious beliefs. After reading the book, the Hull child's behavior began changing and the child began rejecting the Hull's religion in favor of atheism. The Hull child had numerous phone calls with Mr. Greinke, after Mr. Greinke left MCA, and Mr. Greinke gave the Hull child additional information regarding atheism. Mr. Hull stated that the Greinkes continued to have contact with the child after he had moved to his sister's house in Orlando and loaned him \$1,000. Mr. Hull did not feel that the Greinkes relationship with his child was appropriate and requested that the Greinkes cease contacting his child.

As with the emails between Mr. Hull and the Zuluagas, these emails should not be relevant to an investigation into MCA. These issues involved a personal matter between Mr. Hull, the Hull child and the Greinkes. At no time did Mr. Hull contact the Greinkes as the principal of MCA. In fact, it was Mr. Greinke who contacted Mr. Hull through Mr. Hull's MCA address whereas the prior communications had been through private accounts. Mr. Hull responded to that email. Perhaps the more prudent course of action would have been for Mr. Hull to respond to the email from his personal email address, but that does not change the fact that this was not an MCA issue, but a personal one. The Firm does not recommend any course of correction regarding this incident.

#### **E. Conflict of Interest -CCMG**

Mrs. Lichter, Mr. Hull and Mrs. Smith formed the Classical Charter Management Group (hereinafter "CCMG") on or about September 25, 2017. The Fishbane Report found, "as Mrs. Lichter as MCA's Board President and CCMG's Chief Executive Officer has created, if not a conflict of interest in her two roles, the appearance of impropriety in voting to approve items that financially benefited her partners Mr. Hull and Ms. Smith." The focus of the alleged conflict is this possible financial link.

Mrs. Lichter was interviewed regarding the formation of CCMG. She stated that prior to the formation of the company she received advice from counsel on whether there

would be a conflict of interest in her participating in the company. 1. She believed that there would not be a conflict of interest so long as CCMG did not enter into a contract with MCA. Mrs. Lichter stated that during her tenure with CCMG, the company did not make any money. She elected to leave the company after Mr. Baird made allegations in the Complaint regarding her participation. The Board is required to sign annual conflict of interest statements. Mrs. Lichter executed hers on November 8, 2017 and did not disclose any conflicts at that time.

Mrs. Smith was also interviewed about her involvement. It appears that Mrs. Smith is the most active of the partners. Mrs. Smith confirmed that the three officers were owners in this venture. Mrs. Smith does most of the administrative work and she is very careful that she only does work for this company when at home otherwise not working for MCA. The focus of the company is to consult with other charter schools around Florida, to assist them in setting up classical teachings in charter schools. Mrs. Smith confirmed that they had not made any money yet, but that there was a couple of opportunities. More importantly, Mrs. Smith stated that the financial investment by the owners to date had been very minimal. She could not recall any specific amounts but it would not be more than a couple or few thousand dollars over the years. This type of capital contribution requirements, coupled with the fact that there was no return or income being generated, dispels the concerns of a financial conflict of interest. At the time of the interview, only Mrs. Smith and Mr. Hull remained involved in the company. Mrs. Lichter was replaced by her husband Mr. Lichter, who has subsequently left the company all together.

Ms. Miller was interviewed regarding her knowledge of the formation of CCMG. She stated she learned about CCMG following the issuance of the Baird Complaint and discussed the formation of the company with Mrs. Lichter at a Board Meeting following her review of the Baird Complaint. Even though she had some concerns regarding the perception of a conflict of interest, she felt comfortable with Mrs. Lichter's explanation of the company and Mrs. Lichter's explanation that she had received advice of counsel, Shawn Arnold, before its formation.

Mrs. Lichter is no longer part of CCMG, she never received any compensation from the company and Mr. Hull has since resigned as principal of MCA. We find that no further action is necessary on this issue.

#### **X. Additional Concerns and Miscellaneous Matters**

The Fishbane Report made allegations regarding participation in the Best and Brightest Program and its receipt of funds due to the Program. The Firm interviewed the interested participants in regard to this allegation and we do not believe the facts support



the alleged findings. However, as MCA is currently engaging in mediation with FDOE regarding this issue and we decline to comment further on those allegations herein.

The Fishbane Report made a number of allegations regarding Mr. Lichter and his comments on social media and elsewhere. Mr. Lichter is not a member of the Board nor a member of the MCA faculty. Any comments regarding his communications have been ignored in this report as not relevant.

The Fishbane Report also listed a number of “faculty concerns” as a series of repeating themes regarding Mr. Hull. This is far outside of the scope of Mr. Baird’s initial complaint to FDOE. Comments on internal personnel matters within MCA are unwarranted and far outside of the authority of the District under the Charter Agreement and Florida law. Due the foregoing, to the vagueness of the accusations, and in light of Mr. Hull’s resignation, we have chosen not to investigate or comment on those allegations herein.

The Fishbane Report alleged that according to MCA’s counsel, MCA had conducted an internal investigation in Mr. Baird’s allegations and found them to be without merit. The Report says that neither Mr. Marshall nor Mrs. Turner interviewed anyone or prepared a report in connection with the Complaint. We are unsure of what the importance of including this allegation in the investigation was. The conclusions are not supported by fact. Therefore, we are unable to comment on the lack of allegations or findings.

The Fishbane Report alleges an issue with the MCA grievance policy. The Report alleges that Dr. Thornburg sought to bring a disciplinary issue before the Board and wrote to Mr. Hull for direction, who then sent the request to Mrs. Lichter. The Report states, “her responses speak volumes about the process...It is hard to imagine that one would feel that he/she would receive a fair hearing after receiving a communication such as this.” A review of the record and interview with Mrs. Lichter shows that Dr. Thornburg never filed an official grievance with the Board. As no such action was taken by Dr. Thornburg, the issue will not be commented on further. Further, as required in the Mediated Settlement Agreement, MCA has updated its Grievance policy.

## **Conclusion**

The Firm has extensively reviewed the issues raised in Mr. Baird’s Complaint and in Fishbane’s Report. The Firm has found no basis for Mr. Fishbane’s recommendation that Mrs. Lichter and Ms. Miller need to be removed as members of the MCA Board. Further, there is no provision in either Florida Law or the Charter Contract that provides for such a recommendation. Mr. Fishbane’s comments are far outside the power of the District as MCA’s Sponsor under Florida Law and the Charter Contract.

Based upon our analyzation of the evidence, we have found that there were a few minor technical errors that have occurred in Board administration and oversight. However, those issues have all been corrected, either through the Mediated Settlement Agreement or by independent action of the Board. As discussed above, there remains one item to be cured, and that is the conflicting procedure in the By-Laws and the Policy Manual regarding when quorum is achieved. The Firm recommends that the Board amend its Policy Manual to make it consistent with the Bylaws.

Finally, after a thorough review of all of the evidence presented, including external audit reports and discussions with the current Board Treasurer, Mr. Bolduc, this Firm has found no issue with MCA's financial oversight or management. Further, there is no evidence that the Board or Mr. Hull acted in any way to thwart Mr. Baird's access to records or prevent him from carrying out his duties as Treasurer.